IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1219 of 2000

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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BHALABHAI UFABHAI

Versus

GULAM MOHMAD MUSABHAI

Appearance:

1. Civil Revision Application No. 1219 of 2000

MR RN SHAH for Petitioner

MR GULAM MOHMAD MUSABHAI, respondent in person.

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 27/08/2002

ORAL JUDGEMENT

The present Revision Application has been preferred by the defendant tenant under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Rent Act') against the judgment and order dated 19th October, 2000 passed by the Appellate Bench of Small Causes Chief Court, Ahmedabad in Civil Appeal No.70/1999. The suit premises is a room bearing Municipal Census No.27/226 in a building known as 'Musabhai's Chawl' situated at Gomtipur, Ahmedabad. The petitioner herein is the tenant of the suit premises for a monthly rent of Rs.7=00. The petitioner was in arrears of rent since 1st September, 1981. The plaintiff - respondent, therefore, on 6th November, 1989, gave suit notice and demanded a sum of Rs.686=00 being the amount of arrears of rent from 1st September, 1981 till the date of the notice. In answer to the suit notice, the petitioner, on 19th November, 1989, paid a sum of Rs.252=00 to the plaintiff, for which a receipt was also issued.

The plaintiff instituted H.R.P. Suit No. 2511/1990 in the Court of Small Causes, Ahmedabad. The plaintiff prayed for the decree for possession of the suit premises on the ground that the petitioner defendant was in arrears of rent for more than six months. Pending the said suit, the plaintiff amended the plaint and raised the plea and claimed vacant possession of the suit premises also on the ground that the petitioner had encroached upon the adjoining land and had constructed a room thereon. The learned trial Judge, under his judgment and order dated 24th February, 1999, was pleased to decree the suit on both grounds i.e. the petitioner was in arrears of rent for more than six months and that the petitioner had made illegal construction. Feeling aggrieved, the petitioner preferred the above Civil Appeal No.70/1999 before the Appellate Bench. The Appellate Bench, under its judgment and order dated 19th September, 2000, reversed the finding as regards the construction of the room by the appellant - defendant, but confirmed the finding that on the date of the suit the defendant was in arrears of rent for more than six months. The Appellate Bench, therefore, confirmed the decree passed by the trial Court. Feeling aggrieved, the defendant has preferred the present petition.

Mr.Shah has submitted that though the petitioner was alleged to be in arrears of rent since 1st September, 1981, the suit notice was not given until 6th November, 1989 i.e. well after 8 years from the alleged date of default. Besides, in answer to the suit notice the petitioner did make part payment against the demand.

Therefore also, the petitioner should be held to be ready and willing to pay the rent. Mr.Shah has further contended that the property in question originally belonged to two brothers. There being inter se dispute between the two brothers regarding partition, the petitioner could not make payment of rent to either of them. He has also contended that in the year 1977 the property had vested in the Municipal Corporation on account of default in payment of municipal taxes. Moreover, the rent agreed to be paid by the petitioner included the municipal taxes also. Therefore, the petitioner is entitled to the protection under Section 12(3)(b) of the Rent Act. In support of his argument Mr.Shah has relied upon the judgment of this Court in the matter of GANGABEN POONJABHAI AMIN V/S. NARAYAN SONIA AND ANR. [1974 G.L.R. 310] and of RAMAKANT GOVIND NADKARNI V/S. DINSHA NAVROJJI MANDHORA & ORS. [1996(3) G.L.R. 465]. In my view neither of the said judgments shall have applicability on the facts of the present case. In the matter of Gangaben Poonjabhai Amin (supra), the tenant, in answer to the suit notice, had made certain payments towards arrears of rent demanded reducing the arrears to less than six months. Thus, on the date of the suit the tenant was not in arrears of rent for six months or more. In the present case, admittedly even after payment of Rs.252=00 the petitioner was still in arrears for a period more than six months. It, therefore, can not be said that on the date of the suit the petitioner was not in arrears of rent for six months or more. In the matter of Ramakant Govind Nadkarni (supra), question was whether the case was covered by Section 12(3)(a) of the Rent Act or Section 12(3)(b) of the Rent Act. The Court found that over and above the agreed monthly rent the tenant was liable to pay taxes including education cess. Such taxes being payable yearly, the first requirement in order to attract the rigors of the provision of Section 12(3)(a) was held 'not satisfied'. Such is not the present case. Admittedly, the petitioner herein had agreed to pay monthly rent of Rs.7=00 inclusive of taxes i.e. except the monthly rent the petitioner was not liable to pay any other amount towards the taxes.

As far as the vesting of the property in the Municipal Corporation is concerned, I must say that it is an ancient past and has no relation whatever with the merits of the present case. There is nothing on the record to support the claim of the petitioner that there was some dispute between the brothers regarding ownership of the suit premises, and on account of such dispute the petitioner could not make payment of rent. Hence, the

defence raised by the petitioner is too flimsy to hold water. The fact remains that the petitioner was liable to pay monthly rent of Rs.7=00 and, that on the date of the suit he was in arrears of rent for more than six months. In the said circumstances the Courts below could not have refused the decree for possession. Mr.Shah has vehemently urged that on the date of the decree the petitioner had made good the entire amount of arrears of rent. However, the said fact shall not help the petitioner. The petitioner was required to pay the entire amount of arrears of rent within one month from the date of receipt of the suit notice. Making such payment at the fag end of the suit would not save the petitioner from the decree for possession.

In above view of the matter, I am of the opinion that both the Courts below have rightly passed the decree for possession against the petitioner. No interference is, therefore, warranted. Civil Revision Application is dismissed with costs. Rule is discharged. Ad-interim stay stands vacated.

The learned advocate Mr.Shah prays that some time be granted to the petitioner to handover the vacant possession of the suit premises to the plaintiff landlord.

On the facts and in the circumstances of the case, the petitioner is directed to handover the vacant possession of the suit premises latest by 28th February, 2003, on condition that the petitioner pays monthly rent regularly and on further condition that the petitioner or anybody claiming through him shall not cause harassment to the plaintiff - landlord nor shall he part with the possession of the suit premises in any manner whatsoever. The petitioner shall, within 15 days from today, give an undertaking to this Court to abide by the above directions. The petitioner shall also disclose the names of the persons residing with him. Copy of the undertaking shall be given to the plaintiff - landlord also.

(Ms. R.M. Doshit, J.)

/sakkaf